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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,580	02/27/2002	Benoit Sallet	P21995	5891
7055	7590	12/18/2003		
GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			EXAMINER MUROMOTO JR, ROBERT H	
			ART UNIT 3765	PAPER NUMBER 7
DATE MAILED: 12/18/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/083,580

Applicant(s)

SAILLET ET AL.

Examiner

Robert H Muromoto, Jr.

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Priority*

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Claim Rejections - 35 USC § 102/103***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5-8, 11 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Bolton UK provisional #974,426.

Bolton discloses a pressure suit, as an inflatable, flexible (claim 6) garment made of gas impermeable material (claim 8), which would inherently be strong, insulated and water tight, as recited in claim 11.

In figure 1, it is essential that the point A representing the inner end of the slot as formed to receive the panel 13 is on or near the virtual axis of the bending of the knee joint when the garment is pressurized. It should be noted that the edges 11a and 12a

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are not straight but have a curved length equal to the edges of the panel 13 (claim 7) to which they are joined (claim 2) in making up the garment. When the knee is flexed, the joint assumes the condition shown in figure 2a with slight puckering at the rear and with the material at the front extended. When the knee is straight the joint assumes the condition shown in figure 2b with a slight fold of surplus material (claim 14) behind the panel 13 (claim 7). In figure 3, a suit is shown with joints similar to those of figure 2 at the elbow, buttocks, knee, and shoulder, the panel portion in each joint spanning the bending axis (col. 2, lines 50-80); (claim 5).

Specifically, the outer layer as recited corresponds to the panel 13, the underlying layer corresponds to the material to be joined to the panel 13. These two layers are free from each other except where they are attached at the edges, as recited in claim 1.

Claims 10 and 14 are rejected under 35 U.S.C. 102(b) as anticipated by Bolton or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bolton.

With respect to the recitations of claims 10 and 14, the structure recited is that of functional folds for bending and an underlying layer fixed on the outer layer, which is provided by Bolton. The additional limitations of claim 10 and 14 are not structural limitations. Rather they are process limitations, which would imply a product by process claim. So in the alternative, claims 10 and 14 could also be rejected with a 103 rejection.

"The lack of physical description in a product-by-process claim makes determination of the patentability of the claim more difficult, since in spite of the fact that

the claim may recite only process limitations, it is the patentability of the product claimed and not of the recited process steps which must be established. We are therefore of the opinion that when the prior art discloses a product which reasonably appears to be either identical with or only slightly different that a product claimed in a product-by-process claim, a rejection based on either section 102 or section 103 of the statute is eminently fair and acceptable. As a practical matter, the Patent Office is not equipped to manufacture products by the myriad of processes put before it and then obtain prior art products and make physical comparisons therewith." *In re Brown*, 459 F.2d 531, 535, 173 USPQ 685, 688 (CCPA 1972).

Claims 3, 4, 9, 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bolton in view of Hunter et al. '934.

Although Bolton teaches essentially all of the limitations of the instant invention, Bolton does not specifically teach a yoke structure made of LYCRA®, or neoprene.

However, LYCRA® and neoprene are widely used materials for wetsuits as can be shown in the examiner's cited references which all make use of neoprene and LYCRA® or spandex materials, which are considered equivalent materials.

Therefore it would have been obvious to one of ordinary skill in the art to use a LYCRA® or neoprene material in the construction of an aquatic sports garment.

Hunter teaches a neoprene wetsuit with a neck entry system that uses an elastic back panel (yoke) 26 that is connected to inner portions of the suit just at the periphery of the panel 26. The panel 26 allows sufficient expansion (bending) to permit entry to the suit while ensuring a watertight seal when closed.

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Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to use a yoke panel structure to provide a wetsuit with areas of higher expansion (bending) while still ensuring a water tight seal.

**Conclusion**


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Numerous references teaching wetsuits and their structures have been cited.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert H Muromoto, Jr. whose telephone number is 703-306-5503. The examiner can normally be reached on 8-530, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.

Bhm  
December 15, 2003

  
JOHN J. CALVERT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700